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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ERIC B. HARRIS, MAY HARRIS,
HALEY HARRIS, a minor by her
Guardian ad Litem, MAY HARRIS,
CAMERON HARRIS, a minor by his
Guardian ad Litem, MAY HARRIS,

Plaintiffs,

v.

CITY OF CHULA VISTA, OFFICER
JEFF CRAFT, CHIEF OF POLICE
RICHARD P. EMERSON, DOES 1-10,
inclusive.

Defendants.

Civil No.: 09CV2239 JAH (POR)

**PLAINTIFFS' REPLY TO
DEFENDANTS' RESPONSE TO
PLAINTIFFS' EX PARTE MOTION
TO CONTINUE SUMMARY
JUDGMENT PURSUANT TO F.R.C.P.
RULE 56(d)(1) AND FOR LEAVE TO
CONDUCT ADDITIONAL
DISCOVERY PURSUANT TO F.R.C.P.
56(d)(2)**

The Hon. John A. Houston

Complaint Filed: October 9, 2009

Trial Date: None scheduled

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PLAINTIFFS HAVE NOT BEEN DILATORY IN SEEKING DISCOVERY

The crux of Defendants' objection to Plaintiffs' request to conduct additional discovery is an allegation that Plaintiffs have been dilatory in seeking discovery.

1 This is not true. As stated in the moving papers, Defendants made wild “fact”
2 claims in their Motion for Summary Judgment (“MSJ”) that Plaintiffs heard of for the
3 first time in City’s Separate Statements of Undisputed Material Facts [Doc. 40-2]
4 accompanying their MSJ . One cannot conduct discovery in anticipation of previously
5 unknown assertions of fact.

6 We address them in order below:

7 **A. MONELL CLAIMS**

8 The information Plaintiffs seek will challenge City’s attempt to dismiss the *Monell*
9 claim. The discovery shows a pattern of conduct by CVPD not to investigate and not to
10 sanction officers falsely arrest, batter and/or fabricate reports regarding citizens.

11 The information Plaintiffs seek will also quite simply impeach Chief Emerson -
12 City’s key witness regarding Monell liability - on his assertion that he maintains a strict
13 one strike-you’re out policy regarding rogue officers.

14 Defense counsel makes a circular argument as to why plaintiffs’ counsel has not
15 made a showing sufficient to re-open limited discovery. On one hand, defense counsel
16 accuses plaintiffs’ counsel of revealing privileged information. Counsel has filed a
17 declaration under seal highlighting the substance of what occurred in the Morales case
18 that gives rise to this request for discovery.

19 **1. Emerson’s “You lie, you die” Policy**

20 What is clear, is that for the *first time* we hear a statement from Chief Emerson in a
21 declaration in support of City’s MSJ that he has a “you lie, you die” policy. This is
22 essentially the equivalent of “One strike, you’re out.” This is a never before heard of
23 “policy” from CVPD. In reality it *doesn’t* exist. Chief Emerson just put this in a
24 declaration in attempts to avoid *Monell* liability not realizing that this patently false
25 statement would prompt Plaintiffs’ to seek re-opening discovery into the Morales case to
26 prove his lie.
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1 First, we know the “You lie, you die” policy to be a fabrication because the last
2 time Defendant Krafft attacked and beat up someone, and paid \$95,000 in damages in a
3 federal lawsuit, nothing happened to him. Krafft was *not* punished *nor* terminated. He
4 lied, but he didn’t “die.” Assuming that Chief Emerson will come up with some
5 explanation as to why Krafft wasn’t disciplined in *that* case, he will be hard pressed to
6 come up with an explanation as to why the “You lie, you die” was not applied to former
7 CVPD Moises Rodriguez after he brutally attacked teenager Christian Morales in his
8 driveway. In fact, Rodriguez was exonerated of all wrongdoing in that case. Still, City
9 paid Christian Morales \$400,000 for his extensive injuries.

10 There is a pattern to Chief Emerson’s failure to discipline, and it sits hidden behind
11 a protective order in *Morales v. City, et al.*, Case No.07CV0186 JM (WMc). (See, Decl.
12 Of Mary Frances Prevost, filed under seal).

13 If this Court allows Plaintiffs’ counsel to re-open discovery in the Morales case,
14 we will prove that Emerson’s statement in his declaration regarding a “You lie, you die”
15 policy is merely a false statement made in this case to avoid *Monell* liability, that such a
16 policy does not exist, and we will effectively impeach the City’s chief *Monell* witness and
17 pierce the veil of City’s *Monell* defense.

18 **2. Modification of the Original Protective order is Authorized**

19 In his response, Mr. Lucas claims that the information sought is
20 protected forever and for eternity by a protective order that cannot be altered. Untrue.
21 The relevant portions of the protective order authorizing modification of it are sec. 12.1,
22 13.1 and 13.2 which state, respectively:

23 **12. MISCELLANEOUS**

24 **12.1 Right to Further Relief.** Nothing in this Order
25 abridges the right of any person to seek its modification by the
26 Court in the future.

27 **13. MODIFICATION BY COURT**

1 13.1 The Court may modify this Order sua sponte in the
2 interest of justice.

3 13.2 This Order is subject to further court orders based
4 upon public policy and other considerations.

5 **B. KRAFFT COMPLAINTS**

6 Upon receiving a copy of the criminal investigative report that reported Defendant
7 Krafft head butted an unarmed citizen and then ran away before the police arrived,
8 counsel Prevost began attempting to skip trace the witnesses identified in those reports.
9 (See, original Affidavit of counsel in support of motion). As of September 11, 2011, the
10 majority of letters have been returned "Return to Sender", "Unable to forward",
11 "Attempted - not known", "No mail receptacle", and Vacant."

12 Counsel has just unearthed three more potential addresses for three witnesses to
13 Krafft's attack.

14 Defendant Krafft himself was void of any memory of anyone associated with the
15 Alaska attack. He couldn't remember his lawyer's name. He couldn't remember when it
16 occurred. He couldn't remember names of witnesses. He didn't remember how he
17 learned of it. He didn't remember be served with a copy. He didn't remember the names
18 of witnesses. He provided absolutely no information that assisted the defense in
19 identifying the case. Indeed, he didn't even know if a case was even filed.

20 Hence, when defense counsel ran him through the system under "Krafft", no case
21 came up. Attached is a copy of a PACER docket search report showing that there are no
22 entries under Krafft. (Exhibit A). More recently, counsel began variations on the name
23 "Krafft" and came up with the docket sheet in Krafft's assault case in Alaska. Upon
24 learning of the existence of the case, Attorney Prevost contacted the federal court in
25 Alaska, sent up a storage retrieval fee and on October 5, 2011, sent a check to the clerk
26 for copies which are anticipated to be delivered the second week of October.
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1 According to the docket, the parties exchanged witness lists. Given the inability
2 thus far to contact the witnesses identified in the police reports, and after speaking to
3 Plaintiff's counsel and learning that she no longer had any files on the case, it is
4 paramount to the proper defense of the MSJ to obtain the witness lists submitted by the
5 parties.

6 Additionally, while Plaintiff's counsel in the Alaska suit was unable to provide any
7 documentation from the case, she did identify the whereabouts - in general - of the
8 Plaintiff. Plaintiff's counsel herein has hired an investigator in Alaska to track down that
9 witness, as well as another potential witness for whom Plaintiffs have a lead on.

10 CONCLUSION

11 For the reasons stated above, and in the accompanying declaration of Mary
12 Frances Prevost, Plaintiffs respectfully request this Court grant a continuance of the
13 Motion for Summary Judgment, and grant permission to conduct additional discovery
14 relevant to the Monell claims and Defendant Krafft's history of violence. This request
15 necessarily implies obtaining the original *Morales* Pitchess discovery as identified in the
16 accompanying affidavit, *as well as* obtaining the discovery regarding CVPD Moises
17 Rodriguez's attack of a citizen *subsequent* to Morales' attack which City *withheld* from
18 Morales during discovery in his case.

19 Plaintiffs respectfully request that once they have received all of the relevant
20 documentation from the *Morales* file, that they have the opportunity to depose Lt. Sallee
21 who 1) conducted incomplete background check of Defendant Krafft, and whose
22 participation on the *Morales* case impeaches Chief Emerson's "You lie, you die" policy
23 (See, Affidavit of Mary Frances Prevost, file under seal herewith). Plaintiffs also
24 respectfully request that this Court grant Plaintiffs the right to re-depose Chief Emerson
25 after completion of discovery to challenge him on his newly stated "You lie, you die"
26 policy.
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28 Dated: October 5, 2011

Respectfully submitted,

LAW OFFICES OF MARY F. PREVOST

/s/ Mary Frances Prevost
Attorney for Plaintiffs

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